

**STATE OF MISSOURI  
MISSOURI DEPARTMENT OF CONSERVATION (MDC)  
TERMS AND CONDITIONS -- REQUEST FOR PROPOSAL**

**1. TERMINOLOGY/DEFINITIONS**

Whenever the following words and expressions appear in a Request for Proposal (RFP) document or any amendment thereto, the definition or meaning described below shall apply.

- a. Amendment means a written, official modification to an RFP or to a contract.
- b. Attachment applies to all forms which are included with an RFP to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- c. Bid Target Date and Time and similar expressions mean the exact deadline required by the RFP for the receipt of bids.
- d. Bidder means the person or organization that responds to an RFP by submitting a bid with prices to provide the equipment, supplies, and/or services as required in the RFP document.
- e. The Contact Person as referenced herein is a representative of the MDC.
- f. Contract means a legal and binding agreement between two or more competent parties, for a consideration for the procurement of equipment, supplies, and/or services.
- g. Contractor means a person or organization who is a successful bidder as a result of an RFP and who enters into a contract.
- h. Exhibit applies to forms which are included with an RFP for the bidder to complete and submit with the bid prior to the specified target date and time.
- i. Request for Proposal (RFP) means the solicitation document issued by the MDC to potential bidders for the purchase of equipment, supplies, and/or services as described in the document. The definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Amendments thereto.
- j. May means that a certain feature, component, or action is permissible, but not required.
- k. Must means that a certain feature, component, or action is a mandatory condition. Failure to provide or comply will result in a bid being considered non-responsive.
- l. Pricing Page(s) applies to the form(s) on which the bidder must state the price(s) applicable for the equipment, supplies, and/or services required in the RFP. The pricing pages must be completed and submitted by the bidder with the bid prior to the specified bid target date and time.
- m. Shall has the same meaning as the word must.
- n. Should means that a certain feature, component and/or action is desirable but not mandatory.

**2. APPLICABLE LAWS AND REGULATIONS**

- a. The contract shall be construed according to the laws of the State of Missouri. The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- b. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the MDC.
- c. The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.
- d. The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.
- e. The exclusive venue for any legal proceeding relating to or arising out of the RFP or resulting contract shall be in the Circuit Court of Cole County, Missouri.

**3. SUBMISSION OF BIDS**

- a. Bids must be submitted as specified in the RFP. All bids must (1) be submitted by a duly authorized representative of the bidder's organization, (2) contain all information required by the RFP, and (3) be priced as required.
- b. The envelope or container containing a bid should be clearly marked on the outside with (1) the official RFP number and (2) the official target date and time. Different bids should not be placed in the same envelope, although copies of the same bid may be placed in the same envelope.
- c. A bid which has been delivered to the MDC office, may be modified by signed, written notice which has been received by the MDC prior to the official target date and time specified. A bid may also be modified in person by the bidder or its authorized representative, provided proper identification is presented before the official target date and time. Telephone or telegraphic requests to modify a bid shall not be honored.
- d. A bid which has been delivered to the MDC office, may only be withdrawn by a signed, written notice or facsimile which has been received by the MDC prior to the official target date and time specified. A bid may also be withdrawn in person by the bidder or its authorized representative, provided proper identification is presented before the official target date and time. Telephone or telegraphic requests to withdraw a bid shall not be honored.
- e. Bidders must sign and return to MDC the RFP the cover page or, if applicable, the cover page of the last amendment thereto in order to constitute acceptance by the bidder of all RFP terms and conditions. Failure to do so may result in rejection of the bid unless the bidder's full compliance with those documents is indicated elsewhere within the bidder's response.

**4. PREFERENCES**

- a. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri and to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals. Such preference shall be given when quality is equal or better and delivered price is the same or less.
- b. In accordance with Executive Order 98-21, contractors are encouraged to utilize certified minority and women-owned businesses in selecting subcontractors.

**5. EVALUATION/AWARD**

- a. Any clerical error, apparent on its face, may be corrected by the buyer before contract award. Upon discovering an apparent clerical error, the buyer shall contact the bidder and request clarification of the intended bid. The correction shall be incorporated in the notice of award. Examples of apparent clerical errors are: 1) misplacement of a decimal point; and 2) obvious mistake in designation of unit.
- b. Any pricing information submitted by a bidder shall be subject to evaluation if deemed by the MDC to be in the best interest of the MDC.
- c. The bidder is encouraged to propose price discounts for prompt payment or propose other price discounts that would benefit the MDC. However, unless otherwise specified in the RFP, pricing shall be evaluated at the maximum potential financial liability to the MDC.

- d. Awards shall be made to the bidder whose bid (1) complies with all mandatory specifications and requirements of the RFP and (2) is the lowest and best bid, considering price, responsibility of the bidder, and all other evaluation criteria specified in the RFP and (3) complies with Sections 34.010 and 34.070 RSMo and Executive Order 04-09.
- e. In the event all bidders fail to meet the same mandatory requirement in an RFP, MDC reserves the right, at its sole discretion, to waive that requirement for all bidders and to proceed with the evaluation. In addition, the MDC reserves the right to waive any minor irregularity or technicality found in any individual bid.
- f. The MDC reserves the right to reject any and all bids.
- g. When evaluating a bid, the MDC reserves the right to consider relevant information and fact, whether gained from a bid, from a bidder, from bidder's references, or from any other source.
- h. Any information submitted with the bid, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a bid and the award of a contract.
- i. Any award of a contract shall be made by notification from the MDC to the successful bidder. The MDC reserves the right to make awards by item, group of items, or an all or none basis. The grouping of items awarded shall be determined by MDC based upon factors such as item similarity, location, administrative efficiency, or other considerations in the best interest of the MDC.
- j. The MDC reserves the right to request clarification of any portion of the bidder's response in order to verify the intent of the bidder. The bidder is cautioned, however, that its response may be subject to acceptance or rejection without further clarification.
- k. Any bid award protest must be received within ten (10) calendar days after the date of award in accordance with the requirements of 1 CSR 40-1.050 (10).
- l. The final determination of contract award(s) shall be made by MDC.

## 6. INVOICING AND PAYMENT

- a. The MDC does not pay state or federal taxes unless otherwise required under law or regulation.
- b. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the MDC.
- d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the RFP.
- e. The MDC assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the MDC's rejection and shall be returned at the contractor's expense.
- f. All invoices for equipment, supplies, and/or services purchased by the MDC shall be subject to late payment charges as provided in Section 34.055 RSMo.

## 7. DELIVERY

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

## 8. INSPECTION AND ACCEPTANCE

- a. No equipment, supplies, and/or services received by the MDC pursuant to a contract shall be deemed accepted until the agency has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The MDC's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the MDC may have.

## 9. CONFLICT OF INTEREST

- a. Officials and employees of the MDC, its governing body, or any other public officials of the State of Missouri must comply with Sections 105.452 and 105.454 RSMo regarding conflict of interest.
- b. The contractor hereby covenants that at the time of the submission of the bid the contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.

## 10. REMEDIES AND RIGHTS

No provision in the contract shall be construed, expressly or implied, as a waiver by the MDC of any existing or future right and/or remedy available by law in the event of any claim by the MDC of the contractor's default or breach of contract.

## 11. CANCELLATION OF CONTRACT

- a. In the event of material breach of the contractual obligations by the contractor, the MDC may cancel the contract. At its sole discretion, the MDC may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide MDC within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.
- b. If the contractor fails to cure the breach or if circumstances demand immediate action, the MDC will issue a notice of cancellation terminating the contract immediately.
- c. If the MDC cancels the contract for breach, the MDC reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the MDC deems appropriate and charge the contractor for any additional costs incurred thereby.
- d. The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the MDC for any period in which funds have not been appropriated, and the MDC shall not be liable for any costs associated with termination caused by lack of appropriations.

## 12. BANKRUPTCY OR INSOLVENCY

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the MDC immediately.

b. Upon learning of any such actions, the MDC reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

### **13. NON-DISCRIMINATION AND AFFIRMATIVE ACTION**

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
- b. The identification of a person designated to handle affirmative action;
- c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
- d. The exclusion of discrimination from all collective bargaining agreements; and
- e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

If discrimination by a contractor is found to exist, the MDC shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the Office of Administration, Division of Purchasing and Materials Management until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

### **14. AMERICANS WITH DISABILITIES ACT**

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

### **15. FILING AND PAYMENT OF TAXES**

The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise. Therefore bidder's failure to maintain compliance with chapter 144, RSMo may eliminate their bid from consideration for award.

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